

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE, (the "Agreement") is made by and between Andrew McCarthy (the "Plaintiff") and the COLUMBIA PUBLIC SCHOOLS (the "District") (sometimes collectively, the "Parties"):

WHEREAS, Plaintiff is currently employed by the District; and

WHEREAS, on August 25, 2017, Plaintiff filed a six-count petition in the Circuit Court of Boone County, styled *Andrew McCarthy v. Columbia Public Schools and Dr. Kevin Brown* Missouri Case No. 17BA-CV03149 for various claims under the Missouri Human Rights Act (the "Lawsuit"); and

WHEREAS, the District and Dr. Brown deny all claims asserted by Plaintiff in the Lawsuit and further deny any wrongdoing of any kind whatsoever; and

WHEREAS, without any admission as to fault, liability, or wrongdoing as to the validity of the other Parties' positions, the Parties now desire to resolve by compromise and settlement all claims, whether now known or later discovered, which may exist against each other in order to avoid the time, expense and uncertainty of further litigation.

NOW THEREFORE, in consideration of the promises, agreements, and releases contained in this Agreement, the Parties agree as follows:

1. **Releasees.** The term "Releasees" as used in this Agreement includes the District, Dr. Kevin Brown, the Columbia Public Schools Board of Education ("Board"), the past, present, and future officers, directors, managers, trustees, employees, agents, attorneys, insurers, self-insurers, reinsurers, and each of insurers, self-insurers, reinsurers' attorneys, parent companies, subsidiary companies and/or contractors (individually and in their representative capacity) of the Board, and any parent, subsidiary, predecessor, successor, related or affiliated entities. The Releasees, in addition, shall include the heirs, predecessors, successors, assigns or legal representatives of any one of the corporations, officers, directors, managers, trustees, employees, agents, attorneys and/or contractors to which this paragraph makes reference.

2. **Settlement of Disputed and Potential Claims.** The Parties have reached a settlement of all claims Plaintiff asserted or could have asserted, known and unknown, against the Releasees, including, but not limited to all claims for alleged violations of their rights and/or injuries suffered as a result of the alleged disputed conduct of the District and/or its employees. This includes, but is not limited to, all claims related to or asserted in the Lawsuit.

3. **Settlement Amount and Payment.** For and in consideration of full settlement by Plaintiff of all disputed and possible claims arising prior to the date of this Agreement, within twenty (20) days of the fully executed Agreement, the District and/or its insurer shall pay to Plaintiff and his legal counsel the gross amount of One Hundred Fifty-Three Thousand Dollars and 00/100 (\$153,000.00) ("Settlement Amount"). The \$153,000.00 payment shall be apportioned as follows:

- a. The District shall pay Plaintiff the sum of Ninety Thousand Nine Hundred Twenty-Four Dollars and Fifteen Cents (\$90,924.15) in one check made payable to Andrew McCarthy in consideration of the release of Plaintiff's alleged and disputed claims as asserted in the Lawsuit. This amount will be paid to Plaintiff for compensation of his alleged but disputed physical and emotional distress damages. Plaintiff will be issued an IRS Form 1099 for purposes of reporting and paying his tax liability for this payment.

It is agreed that Plaintiff shall be responsible for the payment of any and all taxes which may become due in connection with the payment made in Paragraph 3(a) of this Agreement. Plaintiff agrees to indemnify and hold the District harmless from and against any and all claims brought against the District for the payment of such taxes or withholdings, including any penalties or interest, on the payment made to his or in connection with the payment made to him as set forth in this paragraph.

- b. The District shall also pay the sum of Sixty-Two Thousand Seventy-Five Dollars and Eighty-Five Cents (\$62,075.85) in one check made payable to Plaintiff's attorneys, TGH Litigation LLC, (FEIN 81-4940326), for attorney fees and costs. Plaintiff's attorneys will be issued an IRS Form 1099 for purposes of reporting and paying their tax liability for this payment.

It is agreed that Plaintiff's attorneys shall be responsible for the payment of any and all taxes which may become due in connection with the payments made to them in this Agreement. Plaintiff's attorneys agree to indemnify and hold the District harmless from and against any and all claims brought against the District for the payment of such taxes or withholdings, including any penalties or interest, on the payment made to them or in connection with the payment made to them as set forth in this paragraph.

4. **Dismissal with Prejudice the Lawsuit.** For and in consideration of the covenants, terms, and conditions set forth in this Agreement, Plaintiff agrees to file a Motion to Dismiss with Prejudice against Defendants Columbia Public Schools and Kevin Brown (further stipulating that each party shall bear their own costs) in the Lawsuit, *Andrew McCarthy v. Columbia Public Schools and Kevin Brown*, Case No. 17BA-CV03149 within five (5) business days after receipt of the Settlement Amount described in Paragraph 3.

5. **Mediation Costs.** Each Party is to pay for one half of the mediation costs incurred at the mediation of the Lawsuits that took place on February 4, 2019.

6. **Adequate Consideration.** The Settlement Amount referenced in Paragraph 3 above is paid in settlement for any and all known and unknown claims, actions, causes of action, demand, damages or losses, administrative procedures or other procedures of any kind whatsoever, in law or in equity, Plaintiff has or may have against the District, the Board and its members, agents, employees, past and/or present, attorneys, and representatives arising from any and all claims, actions, causes of action, demand, damages or loss, administrative procedures or other procedures of any kind whatsoever, in law or in equity, Plaintiff may have against them through the effective date of this Agreement. Plaintiff represents that he

has been paid all compensation that is due to him from the District; that he has not suffered any work-related injury for which he has not already filed a claim against the District; and he has not sold, assigned, transferred or otherwise conveyed to any third party any of their rights, claims, actions or demands of any nature whatsoever relating to any matter referenced in this Agreement. Plaintiff understands, agrees, and acknowledges that the consideration given pursuant to this Agreement in exchange for the execution of and compliance with this Agreement is given in addition to anything of value to which he is, as a matter of law, entitled.

7. **Release.** In consideration of the payments, benefits and rights provided to Plaintiff under the terms of this Agreement, Plaintiff hereby forever releases the District, Dr. Kevin Brown, the Board, the past, present, and future officers, directors, managers, trustees, employees, agents, attorneys, insurers, self-insurers, reinsurers, including but not limited to Liberty Mutual Insurance, and/or contractors (individually and in their representative capacity) of the District and Board (collectively, the "Released Parties") from any and all manner of claims, complaints or causes of action of any kind and nature whatsoever, whether now known or unknown, and whether asserted or not asserted, which Plaintiff may have or claim to have by reason of his employment with the District or otherwise. Such released claims include, but are not limited to, claims of discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et. seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621, et. seq., the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq., the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et. seq., the Fair Labor Standards Act, as amended, 29 U.S.C. §201, et. seq., the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2102, et. seq., the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et. seq., 42 U.S.C. § 1981a; 42 U.S.C. § 1983; 42 U.S.C. § 1985; the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq.; the Missouri Human Rights Act, Missouri Revised Statute §213.010, et seq., Article I § 10 of the Missouri Constitution; Article I, § 8 of the Missouri Constitution; and any other federal, state or municipal statutes or ordinances relating to employment or discrimination in employment; claims of wrongful or unjust discharge, retaliation, harassment, defamation, personal injury, emotional distress, tortious interference with business expectancy, invasion of privacy, or other tort claims; claims for unpaid wages, commissions, bonuses, expenses, benefits, or other entitlements or payments; claims for work-related illnesses or injuries; and claims of breach of contract arising from or during Plaintiff's employment with the District or otherwise.

8. **Right to Consult an Attorney.** Plaintiff acknowledges that he has been advised to consult an attorney (at his expense) concerning the meaning and legal implications of this Agreement before signing it. Plaintiff acknowledges that he has had sufficient time to seek the advice and assistance of an attorney, that he understands fully all of the terms of this Agreement, that he has been afforded sufficient time to review this Agreement in order to decide whether to sign, that he has signed this Agreement of his own free will and under no threat or duress by the District or any other person.

9. **Agreement Not to File Suit.** Plaintiff agrees, for and on behalf of himself and his heirs, beneficiaries, executors, administrators, successors, assigns, and anyone claiming through or under any of the foregoing, that he will not file or otherwise submit any charge, claim, complaint, or action to any agency, court, organization, or judicial forum (nor will they permit any person, group of persons, or organization to take such action on their behalf) against the District or any of its officers, agents, employees, or anyone acting on its behalf, arising out of any actions or non-actions on the part of the District arising before execution of this Agreement.

10. **Non-Interference.** Nothing in this Agreement shall prevent or preclude Plaintiff from his right to initiate, cooperate, or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission or any other federal or state regulatory or law enforcement agency. However, the payments and other consideration provided to Plaintiff under this Agreement shall be the sole relief available to Plaintiff, and he shall not be entitled to recover, and agrees to waive, any monetary benefits, reinstatement, injunctive relief, or other recovery against the District in connection with any such claims without regard to the person or entity who may have brought such claim.

11. **Non-Admission of Liability.** The Parties agree that this Agreement and payments hereunder are not to be construed as an admission of any liability and that each Party denies any liability to the other.

12. **Confidentiality.** Plaintiff and Plaintiff's counsel agree not to make any public statement to news or social media concerning this Agreement and/or the resolution of the Lawsuit, except to state that the matter has been resolved. Nothing in this Agreement shall preclude Plaintiff from communicating the terms of this release as may be necessary to obtain tax or investment advice concerning the proceeds of this settlement, or to disclose the apportionment thereof, or to their immediate family members.

13. **Language Construction.** The Parties understand and agree that all terms of the Agreement are contractual and are not a mere recital, and represent and warrant that they are competent and possess the full and complete authority to covenant and agree as herein provided. The Parties agree and stipulate that this Agreement was negotiated on an "arms-length" basis between parties of equal bargaining power. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against either party hereto.

14. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict or choice of law principles. The Parties agree that any dispute arising under this Agreement shall be decided in Circuit Court of Boone County, Missouri, and the Parties expressly consent to jurisdiction and venue in the Circuit Court of Boone County, Missouri.

15. **Successors and Assigns.** This Agreement shall be binding upon all Parties, including but not limited to, their respective heirs, administrators, attorneys, representatives, executors, successors and assigns, and shall inure to the benefit of the Parties and to their respective current and former officers, directors, servants, representatives, agents, administrators, attorneys, employees, predecessors, successors, assigns, parents, subsidiaries, affiliated or related entities and insurers.

16. **Counterparts.** It is understood and agreed that this Agreement may be executed in multiple originals and/or counterparts, each of which shall be deemed an original for all purposes, but all such counterparts together shall constitute one and the same instrument.

17. **Entire Agreement; Invalid Provision.** The Parties have carefully read this Agreement in its entirety. This is the entire Agreement between the Parties. This Agreement may not be modified or canceled in any manner except by a writing signed by Plaintiff and an authorized District official. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

18. **Non-Medicare Beneficiary.** Plaintiff represents and warrants that he is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not Medicare recipient as of the date of this Agreement, no conditional payments have been made by Medicare. Plaintiff agrees to indemnify and hold the District harmless from and against any and all claims brought against the District pertaining to Medicare issues stemming from the payment of the Settlement Amount to Plaintiff, including any penalties or interest. Further, Plaintiff specifically warrants that there is no Medicaid or attorney liens. Plaintiff agrees to indemnify the District, hold it harmless against, and to satisfy any and all liens including, but not limited to, liens asserted by attorneys, insurance companies, hospitals, health and medical care providers, and governmental agencies.

19. **Recitals.** The recitals contained in this Agreement form a part of this Agreement and are binding to the Parties to this Agreement.


ANDREW MCCARTHY

2-26-19
Date


Board President
COLUMBIA PUBLIC SCHOOLS

3-13-19
Date


Board Secretary
COLUMBIA PUBLIC SCHOOLS

3-13-19
Date